

## Pt. 1965

is a disagreement over the use of proceeds or whenever we reject a request for a release.

### *Farm Operating Expenses*

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount FmHA or its successor agency under Public Law 103-354 should release for operating expenses and whether a particular farm operating expense is "essential." As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

Section 1962.17 of this subpart states that essential expenses are those which are "basic, crucial or indispensable." Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses, but when this is not possible, FmHA or its successor agency under Public Law 103-354 and the borrower must work together to decide which farm operating expenses are essential and demand immediate attention and cannot be neglected. These are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When

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deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts, and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

[56 FR 15829, Apr. 18, 1991]

EXHIBIT F TO SUBPART A OF PART 1962  
[RESERVED]

### PART 1965—REAL PROPERTY

#### Subpart A—Servicing of Real Estate Security For Farm Loan Programs Loans and Certain Note-Only Cases

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## RHS, RBS, RUS, FSA, USDA

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EXHIBIT A TO SUBPART A—MEMORANDUM OF UNDERSTANDING BETWEEN BUREAU OF SPORT FISHERIES AND WILDLIFE AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103–354 [NOTE]

EXHIBIT B TO SUBPART A—NOTIFICATION OF OTHER LIENHOLDERS INTENT TO FORECLOSE [NOTE]

EXHIBIT C TO SUBPART A—PROCESSING GUIDE [NOTE]

EXHIBIT D TO SUBPART A—EQUITY RECAPTURE AGREEMENT [NOTE]

### Subparts B–E [Reserved]

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

## Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

SOURCE: 51 FR 4140, Feb. 3, 1986, unless otherwise noted.

### § 1965.1 Purpose.

This subpart delegates authority and prescribes policies and procedures for servicing real estate, leasehold interests, and certain note-only cases for Farmers Home Administration or its successor agency under Public Law 103–354 (FmHA or its successor agency under Public Law 103–354) Farmer Program (FP) loans. Security servicing for borrowers who have *both* FmHA or its successor agency under Public Law 103–354 FP and Single Family Housing (SFH) loans, (excluding Technical Assistance Grants and Site loans), will be according to this subpart. Security servicing for borrowers who are indebted for SFH loans only, will be according to subpart C of part 1965 of this

chapter. Security servicing for Nonprogram (NP) loan(s) on farm real estate and chattel property will be according to subpart J of part 1951 of this chapter. For borrowers who have both a FP and NP loan, security servicing will be in accordance with the applicable FP regulations and subpart J of part 1951 of this chapter. This subpart does not apply to FmHA or its successor agency under Public Law 103–354 guaranteed loans, Rural Rental Housing (RRH) loans, Labor Housing (LH) loans, Business and Industrial (B&I) loans, Community Programs (CP) loans, Shift-in-Land-Use (Grazing Association) loans, Irrigation and Drainage (I&D) loans, or Indian Tribal Land Acquisition loans.

[58 FR 52654, Oct. 12, 1993]

### § 1965.2 General policies.

(a) The terms “nonprogram (NP)” and “ineligible” may be used interchangeably throughout this subpart but are identical in their meaning.

(b) FmHA or its successor agency under Public Law 103–354 will service real estate security in a manner that best accomplishes the loan objectives and protects the Government’s financial interest. To accomplish this, FmHA or its successor agency under Public Law 103–354 will service the real estate security in accordance with the security instruments and related agreements, including any authorized modifications and the provisions of this subpart.

(c) The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant’s income is derived from any public assistance, program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law is the Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

(d) If the farm is situated in more than one State, county or parish, the loan will be serviced by the County Office servicing the county in which the